IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ALVIN JONES, JR.,	*	
Plaintiff,	*	
v.	*	Civil No. RDB-06-1841
FRANK SIZER,	*	
Defendant.	*	

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
OR, IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

Defendant, former Commissioner Frank Sizer, by his attorneys, Douglas F. Gansler, Attorney General of Maryland, and Phillip M. Pickus, Assistant Attorney General, in support of his Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, files this Memorandum of Law and states as follows:

I Introduction

Plaintiff, an inmate currently incarcerated in a Washington State Penitentiary, has filed in effect this action under 42 U.S.C. §1983. He alleges that he was involuntarily transferred out of the Maryland Division of Correction to a Washington State penitentiary. (*See* Complaint). He alleges that this transfer has caused him considerable hardship and stress. *Id*. He seeks a transfer back to Maryland as well as monetary damages. *Id.*

II. Factual Background

Plaintiff was convicted in Maryland of first degree murder and handgun violations and is serving a sentence of life plus twenty years dating from January 1, 1991. (*See* Exhibit No. 1, Memorandum dated April 4, 2005). Once incarcerated, plaintiff founded the prison gang known as the Black Guerrilla Family (BGF) at the Maryland House of Correction-Annex[1] (MHC-X) in 1995. (*See* Exhibit No. 2, Case Management Assignment Sheet). In 2003, plaintiff renounced the BGF. (*See* Exhibit No. 3, Application for Interstate Corrections Compact Transfer).

In 2004, MHC-X officials received information that plaintiff's life was in danger from at least three different sources. (*See* Exhibit No. 2). Because of plaintiff's history starting and renouncing the BGF and the information regarding the threats to his life, it was determined that plaintiff could not be safely housed in the Maryland Division of Correction. (*See* Exhibit No. 3). Plaintiff, therefore, was transferred pursuant to the Interstate Corrections Compact (ICC) so he could safely be housed in another state. (*See* Exhibit No. 1). In this case, the receiving state was Washington and the actual transfer occurred on April 6, 2005. *Id*.

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[1] MHC-X has since been renamed the Jessup Correctional Institution (JCI).

III. Argument

A. Plaintiff Has Failed To State A Claim

Plaintiff's transfer to the State of Washington does not rise to constitutional concern because it does not implicate a liberty interest. The Supreme Court conclusively decided the issue in *Olim v. Wakinekona*, 461 U.S. 238, 244-45 (1983). The *Olim* Court found no liberty interest for a Hawaii inmate transferred to California and pronounced that "[j]ust as an inmate has no justifiable expectation that he will be incarcerated in any particular prison within a State, he has no justifiable expectation that he will be incarcerated in any particular State." *Olim*, 461 U.S. at 246. The Court noted that persons convicted of federal crimes usually are housed outside their home state when assigned to an institution within the U.S. Bureau of Prisons. *Id*. The Court also recognized the numerous reasons transfers occur among state prison systems and concluded such transfers are "neither unreasonable nor unusual" *Id.* at 247.

Similarly, in *Cochran v. Morris*, 73 F.3d 1310 (4th Cir. 1996), the Fourth Circuit found no liberty interest regarding a pending interstate transfer. *Cochran* was decided after the Supreme Court decided *Sandin v. Conner*, 515 U.S. 472, 484 (1995), which requires an "atypical and significant hardship" to invoke a liberty interest. The *Cochran* Court concluded that interstate transfers do no constitute an atypical and significant hardship as required by *Sandin*. *Cochran*, 73 F.3d at 1318. Interestingly, although *Olim* was decided prior to *Sandin*, the Supreme Court used similar language when it held confinement in another state is "'within the normal limits or range of custody which the conviction has authorized the State to impose.'" *Olim*, 461 U.S. at 247 (quoting *Meachum v. Fano*, 427 U.S. 215, 225 (1976)). All these decisions are merely an extension of the rule that intrastate transfers do not invoke a liberty interest. *See Meachum*, 427 U.S. at 225; *Paoli v. Lally*, 812 F.2d 1489, 1492-93 (4th Cir.), *cert. denied*, 484 U.S. 864 (1987).

These cases make it clear plaintiff's transfer to Washington State is incidental to the normal course of incarceration. Because of plaintiff's history and the threats to his safety, DOC officials determined plaintiff could not be safely housed in the Maryland DOC. This Court should now give "substantial deference" to the judgment of Maryland officials in carrying out the legitimate goals of the correctional system. *See Overton v. Bazzetta*, 539 U.S. 126, 132 (2003)("We must accord substantial deference to the judgment of prison administrators"); *In Re Five Percenters*, 174 F.3d 464, 469 (4th Cir. 1999)(federal courts should give state correctional officials "wide-ranging deference in the adoption and execution of policies and practices").

Plaintiff asserts that this transfer has prevented him from litigating his legal claims. Plaintiff, however, does not point to any specific case or any actual harm that he has suffered and this is fatal to his claim. To make out a valid federal constitutional claim of denial of access to court, plaintiff must allege that he has suffered actual prejudice to his ability to proceed with a particular protected legal claim. *See Strickler v. Waters*, 989 F.2d 1375, 1383 (4th Cir.), *cert. denied*, 510 U.S.

949 (1993)(adopting actual injury requirement in rejecting detainee's claim of inadequate law library); *Bernadou v. Purnell*, 836 F. Supp. 319, 325 (D. Md.), *aff'd*, 8 F.3d 816 (4th Cir.), *cert. denied*, 510 U.S. 1168 (1994)(no showing of actual harm from confiscation of legal materials during shakedown). Actual prejudice in this context refers to concrete harms such as the inability to meet a filing deadline or the inability to file a claim at all. *See Lewis v. Casey*, 518 U.S. 343, 354 (1996)(vacating system-wide injunction relating to provision of legal materials and services in absence of actual deprivation of access except in isolated cases; *Strickler*, 989 F.2d at 1383 n.10. In this regard, conclusory allegations are not sufficient, there must be specific allegations of actual injury. *Cochran*, 73 F.3d at 1317. Because plaintiff has failed to provide specific allegations of actual harm, the case should be dismissed.

B. Defendant Is Entitled To Qualified Immunity

Even if every factual allegation made in the complaint is true, defendant is entitled to qualified immunity. For qualified immunity to apply, defendant's actions must be objectively reasonable and "assessed in light of the legal rules that were clearly established at the time the action was taken." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). To be clearly established for the purpose of qualified immunity, "[t]he contours of the right must be sufficiently clear that a reasonable person would understand that what he is doing violates that right." *Wilson v. Layne,* 526 U.S. 603, 614-15,(quoting *Anderson v. Creighton,* 483 U.S. 635, 640 (1987)).

Once the defense of qualified immunity is raised, the burden is on the plaintiff to show that the defendant's conduct violated law that was clearly established when the alleged violation occurred. *Bryant v. Muth,* 994 F.2d 1082, 1086 (4th Cir.), *cert. denied,* 510 U.S. 996 (1993). Plaintiff must demonstrate that "in light of the pre-existing law, the unlawfulness of the official action was apparent." *Bryant,* 994 F.2d at 1086 (quoting *Mitchell v. Rice,* 954 F.2d 187, 190 (4th Cir.), *cert. denied,* 506 U.S. 905 (1992)). There is no pre-existing law that would hold defendant's actions in this case unconstitutional. In fact, the clearly established law indicates plaintiff's transfer to Washington State does not violate the Constitution in any manner.

C. Summary Judgment

Federal Rule of Civil Procedure 56 provides that summary judgment is appropriate:

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

This does not mean that any factual dispute will defeat the motion:

> By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2511 (1986) (emphasis in original). Moreover, the Supreme Court has explained that the Rule

56 standard mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a): ". . . there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson*, *supra*, 477 U.S. 242, 106 S.Ct. at 2511; *White v. Rockingham Radiologists, Ltd.*, 820 F.2d 98, 101 (4th Cir. 1987); *see also*, *Celotex Corporation v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 2553 (1986). Based upon this standard, the pleadings and exhibits, the Defendant is entitled to summary judgment.

IV. Conclusion.

Defendant respectfully requests this Court to dismiss the case or that summary judgment be entered in his favor.

Respectfully submitted,

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